



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

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March 6, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Gloria Molina
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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

Executive Summary

This memorandum provides information on the following:

- **Pursuit of County Position to Support AB 748 (Eggman)** - This measure would set the interest rate on judgments against State and local governments to the previous year's Pooled Money Investment Account rate, and set an upper limit of 7 percent. Therefore, unless otherwise directed by the Board, consistent with adopted policies related to liability protection and mitigation, **the Sacramento advocates will support AB 748.**

Pursuit of County Position on Legislation

AB 748 (Eggman), which as introduced on February 21, 2013, would revise the post-judgment interest rate to specify that: 1) interest on the amount of a judgment or settlement for the payment of money against the State shall accrue on the amount allowed on the claim at no more than the average Pooled Money Investment Account rate for the previous fiscal year, but not to exceed 7 percent per annum; 2) this accrual rate also applies to interest on the amount of a judgment for the payment of money

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against local public entities, except as otherwise provided by contract; and 3) in any judgment against a public entity or employee not arising out of an act or omission within the scope of employment, interest may accrue at a rate not more than the average Pooled Money Investment Account rate for the previous fiscal year, but not to exceed 7 percent per annum.

The California Constitution requires the Legislature to set the rate of interest upon a judgment rendered in any court in the State at not more than 10 percent per annum. If the Legislature does not set a rate, the rate of interest on any judgment rendered in a court defaults to 7 percent per annum. This is in contrast with the interest rate applied in Federal court judgments, which is tied to the weekly average one-year constant maturity Treasury yield, which is currently well below 1 percent.

The Pooled Money Investment Account, managed by the State Treasurer, invests funds from the State General Fund, special funds and the Local Agency Investment Fund. As an investment fund, its average annual yields reflect the market. Over the last 12 fiscal years, the average annual yield rate has ranged between 0.382 percent (in FY 2011-12) to 6.104 percent (in FY 2000-01), which was its highest rate this century.

The Department of Public Works reports that payments for settlements and adverse court rulings have increased in recent years. On government liability claims, public entities are held to the constitutionally mandated rate of 7 percent per annum (California Federal Savings & Loan Association v. City of Los Angeles, 1995). AB 748 could potentially save the County and other public entities a significant amount of costs because it would allow the post-judgment interest rate to accrue at a rate more in step with current market rates.

County Counsel notes that AB 748 maintains the existing interest rate of 7 percent on public entities and potentially could significantly lower the interest rate based on the Pooled Money Investment Account annual yield rate, which keeps the rate in line with existing market conditions. County Counsel also indicates that AB 748, as introduced, contains unclear language regarding its application to actions occurring in the course and scope of employment and should be clarified since it is unclear whether it is intended to apply only to egregious situations. Additionally, the bill provides that its provisions would apply to interest on the amount of a judgment for the payment of money against local public entities, except as otherwise provided by contract. County Counsel recommends that the bill's language be clarified to indicate that the parties of the lawsuit should be the same parties of the contract for the interest rate to be modified.

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This office, the Department of Public Works, and County Counsel support AB 748. Therefore, unless otherwise directed by the Board, consistent with existing policies related to liability protection and mitigation, **the Sacramento advocates will support AB 748**. Additionally, we will work with the author's office and the bill's sponsor to clarify the issues raised by County Counsel.

AB 748 is sponsored by the Urban Counties Caucus. Currently there is no registered opposition to the bill. This bill is pending referral to a policy committee.

We will continue to keep you advised.

WTF:RA
MR:AO:ma

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
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City Managers Associations
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